

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

JUL 07 2014

SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY, LLC, A WHOLLY OWNED SUBSIDIARY OF LINN ENERGY, LLC, AS SUCCESSOR IN INTEREST TO BERRY PETROLEUM COMPANY, FOR AN ORDER FORCE-POOLING THE INTERESTS OF ALL OWNERS REFUSING OR FAILING TO BEAR THEIR PROPORTIONATE SHARE OF THE COSTS OF DRILLING AND OPERATING THE WELLS LOCATED IN THE DRILLING AND SPACING UNITS IN THE E½ OF SECTION 5 AND ALL OF SECTION 7 IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**


Docket No. 2014-012

Cause No. 272-04

Berry Petroleum Company, LLC, a wholly owned subsidiary of LINN Energy, LLC, as successor in interest to Berry Petroleum Company, by and through its attorneys, Holland & Hart, LLP, pursuant to Utah Admin. Code R641-109-100, hereby submits the proposed Findings of Fact, Conclusions of Law, and Order, attached hereto as Attachment "A."

Respectfully submitted this 7th day of July, 2014.

BERRY PETROLEUM COMPANY, LLC

By 

A. John Davis
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*Attorneys for Petitioner,
Berry Petroleum Company, LLC*

Petitioner's Address:

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Denver, CO 80202
Telephone (303) 999-4400
Attn: Terry L. Laudick, Landman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of July, 2014, a true and correct copy of the foregoing **PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was mailed, postage prepaid, to the following:

United States of America
% Bureau of Land Management
Utah State Office
440 West 200 South, Suite 500
Salt lake City, Utah 84101

Michael S. Johnson, Esq.
Assistant Attorney General
Attorney for the Board of Oil,
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Salt Lake City, Utah 84114-5801

United States of America
% Ashley National Forest
Supervisor's Office
355 North Vernal Ave.
Vernal, UT 84078

The estate of Mary Alice Pendleton Poindexter
4805 Tacoma Blvd.
Shreveport, LA 71107

Burlington Resources Oil & Gas Company, LP
P.O. Box 51810
Midland, TX 79710

HEP Partners LP
500 W Illinois #100
Midland, TX 79701

Enterprise Gas Company
2727 N. Loop West
Houston, TX 77210

United States of America
Bureau of Land Management
Vernal Field Office
170 South 500 East
Vernal, UT 84078

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Attorneys for the Division of Oil,
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Salt Lake City, Utah 84114-5801

Vintage Petroleum, Inc.
State Federal Building
502 S. Main, Suite 400
Tulsa, OK 74103

Southland Energy Corp.
1710 Fourth National Bank Building
16 West 6th Street
Tulsa, OK 74119

Donna A. Gillespie
19402 West 57th Circle
Golden, CO 80403

Burton/Hawks Inc.
P.O. Box 359
Casper, WY 82602

T. Keith Marks
475 Capitol Life Center
Denver, CO 80203

Talisman Oil & Gas Co.
5757 Alpha Rd., Suite 920
Dallas, TX 75240

W.A. Gillespie
10708 Zuni Drive
Westminster, CO 80234-3161

Eagle Ridge Oil & Gas, Inc.
8517 S. 77th E. Place
Tulsa, OK 74133

Allen Revocable Trust, created under
Agreement dated May 4, 2006
1513 Aylesbury Lane
Plano, TX 75075


Pinnacle Home Owner's Association
P.O. Box 270110
Fruitland, UT 84027

Alexandra Ziesler
alibritt@yahoo.com
[no address provided, sent via e-mail]

Respectfully submitted this 7th day of July, 2014.

BERRY PETROLEUM COMPANY

By:



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ATTACHMENT “A”

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY, LLC, A WHOLLY OWNED SUBSIDIARY OF LINN ENERGY, LLC, AS SUCCESSOR IN INTEREST TO BERRY PETROLEUM COMPANY, FOR AN ORDER FORCE-POOLING THE INTERESTS OF ALL OWNERS REFUSING OR FAILING TO BEAR THEIR PROPORTIONATE SHARE OF THE COSTS OF DRILLING AND OPERATING THE WELLS LOCATED IN THE DRILLING AND SPACING UNITS IN THE E $\frac{1}{2}$ of SECTION 5 AND ALL OF SECTION 7 IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Docket No. 2014-012

Cause No. 272-04

This matter came before the Utah Board of Oil, Gas, and Mining (the “Board”) on Wednesday, May 28, 2014, at approximately 4:30 p.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present and participated in the hearing: Ruland J. Gill, Jr., Chairman, Kelly L. Payne, Carl F. Kendell, Chris Hansen, Susan S. Davis, and Gordon L. Moon. The Board was represented by Michael S. Johnson, Assistant Attorney General.

Testifying on behalf of Petitioner, Berry Petroleum Company, LLC, a wholly owned subsidiary of LINN Energy, LLC, as successor in interest to Berry Petroleum Company (“Petitioner”), was Terry L. Laudick, Senior Staff Landman, Carole Edwards, Senior Reservoir Engineer, and Julie Pyle, Staff Geologist. A. John Davis of Holland & Hart, LLP appeared as counsel for Petitioner.

Attending on behalf of the Division of Oil, Gas and Mining (the “Division”) was Brad Hill, Oil and Gas Permitting Manager, and Dustin Doucet, Petroleum Engineer. The Division was represented by Douglas Crapo, Assistant Attorney General.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause shown, hereby enters the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Petitioner is a limited liability corporation with its principal place of business in Denver, Colorado.

2. Petitioner originally filed its Request for Agency Action on December 10, 2013; and then filed an Amended Request for Agency Action on May 7, 2014 (collectively, the original request and amended request are referred to as the “Request”).

3. Petitioner mailed copies of both the original Request and the Amended Request on January 10, 2014, and May 7, 2014, respectively, to the last known addresses of record as shown in the Duchesne County Recorder’s Office and the Bureau of Land Management, Salt Lake City Office (“BLM”), for all persons having a legally protected interest in this matter by certified mail, return receipt requested.

4. Notice of the filing of the original Request and of the hearing thereon was duly published in the Salt Lake Tribune and the Deseret Morning News on January 5, 2014, and the Uintah Basin Standard on January 7, 2014.

5. The Request, as amended, covers the E½ of Section 5 and all of Section 7, Township 6 South, Range 4 West, USM, Duchesne County, Utah (the “Subject Lands”).

6. The Subject Lands are within the area generally known as the Brundage Canyon Field. The oil and gas in the Subject Lands are owned by the United States of America, and the mineral interest underlying the Subject Lands has been leased under United States Oil and Gas Lease UTU-8894A.

7. The leasehold ownership in the federal lease covering the Subject Lands has been divided by depth above and below the base of the Green River Formation. Otherwise, the ownership within each of the drilling and spacing units is uniform.

8. The Subject Lands have been spaced under Docket No. 2014-004, Cause No. 272-03, establishing drilling and spacing units for each of the 40-acre quarter-quarter sections (or equivalent governmental lots) for production of oil and gas from the Green River and Wasatch Formations. The spacing order was issued effective for each drilling unit as of the date of first production for each of the wells located in the respective drilling and spacing units or, for the wells that have not yet begun producing, as of the date the spacing order was entered.

9. Petitioner is the operator of the following wells located on or proposed for the Subject Lands:

	<u>Well Name</u>	<u>Status</u>	<u>Initial Prod. Date</u>
a.	Federal 1-5D-64	Producing	09/17/13
b.	Federal 2-5D-64	Producing	09/17/13
c.	Federal 7-5D-64	Producing	09/13/13
d.	Federal 8-5D-64	Producing	10/01/13
e.	Federal 9-5D-64	Permit Pending	
f.	Federal 10-5D-64	Permit Pending	
g.	Federal 15-5D-64	Permit Pending	
h.	Federal 16-5D-64	Permit Pending	
i.	Federal 6-7-64	Producing	10/20/13

j.	Federal 3-7D-64	Producing	10/27/13
k.	Federal 4-7D-64	Producing	10/20/13
l.	Federal 5-7D-64	Producing	10/20/13
m.	Federal 2-7-64	Producing	11/04/13
n.	Federal 1-7D-64	Producing	11/04/13
o.	Federal 12-7D-64	Producing	10/09/13
p.	Federal 11-7D-64	Producing	10/09/13
q.	Federal 13-7D-64	Producing	10/09/13
r.	Federal 14-7D-64	Producing	10/09/13
s.	Federal 7-7D-64	Producing	11/04/13
t.	Federal 8-7D-64	Producing	11/05/13
u.	Federal 9-7D-64	Producing	11/05/13
v.	Federal 10-7D-64	Producing	11/5/13
w.	Federal 15-7D-64	Future Well	
x.	Federal 16-7D-64	Future Well	

(the "Subject Wells").

10. Petitioner has conducted a thorough title examination of the records of Duchesne County and the BLM to determine the mineral ownership in the Subject Lands. According to this examination, Petitioner owns 100% of the working interest in the federal lease for all depths above the base of the Green River Formation and 78.125% of the working interest for all depths below the base of the Green River Formation, and Burton/Hawks, Inc. ("Burton") owns 21.875% of the working interest below the base of the Green River Formation.

11. Prior to drilling any of the captioned wells, Petitioner sent a letter via certified mail to Burton's last address of record on July 8, 2013, containing authorizations for expenditure (AFE) and giving it the opportunity to participate on a well-by-well basis in each of the Subject Wells except for the six wells that had not yet been proposed and have not yet been drilled, as listed in Paragraph 9 above. The letter to Burton was

returned as undeliverable. Because it did not have a valid address for Burton, Petitioner did not send a letter for the six wells that have not yet been drilled.

12. Petitioner has exercised due diligence and acted in good faith in conducting an extensive search to locate Burton or its successor in interest. In attempting to locate the successor in interest to Burton (which continues to be the working interest owner of record Duchesne County and the BLM) Petitioner reviewed the corporate records for each state where Burton, or any of its potential successors, were allegedly incorporated or qualified to do business, namely Utah, Colorado, Wyoming, Nevada, and Delaware, as well as various state corporate succession lists available online. Petitioner also spoke with the former bankruptcy trustee of a successor to some, but not all, of Burton's interests and reviewed the pleadings for a closed liquidation bankruptcy proceeding pertaining to that potential successor to Burton's interests. Petitioner's efforts revealed that the succession of Burton's interest is complicated and contradictory and that the successor to this interest, if any, is uncertain. Accordingly, Petitioner has deemed Burton to be unlocatable.

13. After being sent written notice of the opportunity to participate in the Subject Wells that were drilled in 2013 and, as a result of being unlocatable, Burton has not consented in advance to the drilling and operation of the Subject Wells and has not agreed to bear its proportionate share of the costs. Consequently, Burton is a statutory non-consenting owner, as defined by Utah Code Ann. § 40-6-2(11) and prior precedent of the Board.

14. As Burton is an unlocatable and non-consenting working interest owner, Petitioner has and will continue to carry (pay for) Burton's interest in the Subject Wells.

15. The costs of drilling the wells, and Burton's proportionate share of these costs, is listed as follows:

<u>Well Name</u>	<u>Cost</u>	<u>Burton's Share</u>
FED 1-5D-64	\$1,251,440	\$79,388.00
FED 2-5D-64	\$1,249,428	\$79,261.00
FED 7-5D-64	\$1,249,378	\$79,257.00
FED 8-5D-64	\$1,251,573	\$79,397.00
FED 1-7D-64	\$1,252,117	\$79,431.00
FED 2-7-64	\$1,248,421	\$79,197.00
FED 3-7D-64	\$1,252,414	\$79,450.00
FED 4-7D-64	\$1,253,503	\$79,519.00
FED 5-7D-64	\$1,249,510	\$79,266.00
FED 6-7D-64	\$1,248,124	\$79,178.00
FED 7-7D-64	\$1,248,553	\$79,205.00
FED 8-7D-64	\$1,252,447	\$79,452.00
FED 9-7D-64	\$1,252,612	\$79,463.00
FED 10-7D-64	\$1,248,949	\$79,230.00
FED 11-7D-64	\$1,252,925	\$79,482.00
FED 12-7D-64	\$1,249,345	\$79,255.00
FED 13-7D-64	\$1,248,438	\$79,198.00
FED 14-7D-64	\$1,251,935	\$79,420.00
FED 9-5D-64	\$1,250,617	\$79,336.00
FED 10-5D-64	\$1,250,617	\$79,336.00
FED 15-5D-64	\$1,250,617	\$79,336.00
FED 16-5D-64	\$1,250,617	\$79,336.00
FED 15-7D-64	\$1,250,617	\$79,336.00
FED 16-7D-64	\$1,250,617	\$79,336.00

(the "Subject Wells").

16. As shown on Exhibit H in this matter, Burton's share of the costs in the Subject Wells was calculated by taking the average production from 65 wells producing from both the Green River and Wasatch Formations and subtracting the average production from 54 wells producing only from the Green River Formation. The result of this analysis (the Wasatch Allocation Factor) showed that approximately 29% of the production from a well producing from both the Green River and Wasatch Formations comes from the Wasatch Formation. Thus, Burton's 21.875% working interest in the Wasatch Formation was multiplied by the 29% Wasatch Allocation Factor resulting in Burton owning 6.34375% of the total working interest in each of the Subject Wells.

17. The estimated cost to plug and abandon the Subject Wells listed above is \$35,050.00 per well.

18. The AAPL Form 610-1989 Model Form Operating Agreement ("JOA"), previously filed with the Board as Exhibit "G", contains provisions appropriate to govern the relationship between the operator, Petitioner, and the non-consenting owner, Burton.

19. The Subject Wells are located on the southernmost edge of the Brundage Canyon Field in an area where the Green River and Wasatch Formations become increasingly shallow, heightening the risk of drilling a dry hole or marginally productive well.

20. Force pooling the non-consenting owner's interest pursuant to Utah Code Ann. § 40-6-6.5 in the Subject Lands will promote the public interest, maximize ultimate

recovery of hydrocarbon substances, prevent waste, and protect the correlative rights of all owners.

CONCLUSIONS OF LAW

21. Due and regular notice of the time, place, and purpose of the hearing was properly given in the form and manner as required by law and the rules and regulations of the Board and Division to all of the working interest owners within the subject lands and all appropriate government agencies.

22. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. §§ 40-6-6 and 40-6-6.5.

23. Petitioner properly served all owners and interested parties by mailing copies of the request to such owners by certified mail, return receipt requested, pursuant to R641-106-200 of the Utah Administrative Code.

24. Petitioner acted in good faith, exercised due diligence in its search to locate Burton or the successor to its interest in the Subject Lands, and provided Burton with adequate written notice of its opportunity to participate through the July 8, 2013 Letter to Burton. As to the six wells that had not yet been proposed when the July 8, 2013 Letter was sent, Petitioner was under no obligation to send a letter to an undeliverable address. Burton's status as an unlocatable corporation with an undeliverable address prevented actual written notice.

25. Petitioner made a good faith effort to reach an agreement with Burton, or its successor in interest, to participate in each of the Subject Wells, as required by Utah Admin. Code R649-2-9.

26. Burton is deemed to be a non-consenting owner as defined in Utah Code Ann. § 40-6-2(11).

27. Retroactive pooling under these circumstances is just and reasonable. This pooling order should be made effective as of the date of the spacing order (i.e., for each drilling unit as of the date of first production for each of the wells located in the respective drilling units, or for the wells that have not yet begun producing, the date the spacing order is issued).

28. Based on the risk of drilling and completing the Subject Wells, a 300% non-consent penalty is appropriate.

29. An interest rate of prime plus 2% as set at Zions National Bank is just and reasonable in this matter.

30. The Request and the evidence presented at the Hearings in this matter establishes that force pooling of the non-consenting owner's interests is just and reasonable, promotes the public interest, will maximize ultimate recovery of hydrocarbon substances, will prevent waste of the hydrocarbon resource, and protects the correlative rights of all owners.

31. Petitioner has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the Request.

ORDER

Based upon the Request, testimony, and other evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

A. The Request, seeking an order force pooling Burton's interest in the Subject Lands, is granted.

B. This order is effective as of the date of the spacing order (i.e., for each drilling unit as of the date of first production for each of the wells located in the respective drilling units or, for the wells that have not yet began producing, the date the spacing order is issued).

C. Each owner shall pay their allocated share of the costs incurred in drilling and operating the Subject Wells. Those costs include, but are not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities, reasonable charge for administration and supervision of operations and other costs customarily incurred in the industry.

D. Burton's interest in the Subject Wells shall be deemed relinquished to Petitioner, as the sole consenting owner, during the period of payout for the Subject Wells.

E. Burton shall be entitled to receive the share of production of the Subject Wells applicable to its interest in the drilling unit after Petitioner has recovered the following from Burton's share of production:

- i. 100% of Burton's share of the cost of surface equipment beyond the well head connections including stock tanks, separators, treaters, pumping equipment, and piping;

- ii. 100% of the Burton's share of the estimated cost to plug and abandon the Subject Wells, as determined by the Board;
- iii. 100% of Burton's share of operation of the Subject Wells commencing with the first production and continuing until Petitioner has recovered all costs; and
- iv. 300% of Burton's share of the costs of the Subject Wells for staking the location, well site preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing and completing, and the costs of equipment in the well to and including the wellhead connection, as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D).

F. The interest rate as permitted by Utah Code Ann. § 40-6-6.5(4)(d)(iii) is set to prime plus 2% as set at Zions National Bank.

G. When Petitioner has recovered, from production, Burton's share of the costs of locating, drilling, completing and other costs as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D) together with the non-consent penalty, Burton's relinquished interest shall automatically revert back to it, and Burton shall, from that time forward, own the same interest in the Subject Wells and in the production from them, and shall be liable for further costs of operation, as if it had participated in the initial drilling and completion operations. Costs of operations after payout attributable to Burton shall be paid out of production.

H. Under any circumstance where Burton has relinquished its share of production to Petitioner or at any time fails to take its share of production in kind when it is entitled to do so, Burton is entitled to an accounting of the oil and gas proceeds applicable to its relinquished share of production; and payment of the oil and gas proceeds applicable to that share of production not taken in kind, net of cost.

I. The terms and conditions of the JOA, Exhibit G, shall control the relationship of the parties as to all matters not expressly identified in and to the extent not inconsistent with this order. In the event that there is a conflict between the terms of the JOA and this order or Utah Code Ann. § 40-6-6.5, this order or the statute, as applicable, shall control.

J. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

K. This order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

L. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. § 63-G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this order is entered. Utah Code Ann. § 63G-4-401(3)(a) and 403.

M. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this order. Utah Code Ann. § 63G-4-302. The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied. *Id.*

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month. Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

N. The Board retains exclusive and continuing jurisdiction of all matters covered by this order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

O. The Chairman's signature on a facsimile copy of this order shall be deemed the equivalent of a signed original for all purposes.

DATED this _____ day of July, 2014.

STATE OF UTAH
BOARD OF OIL, GAS, AND MINING

By: _____
Ruland J. Gill, Jr., Chairman